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Federal Express Corporation
Radio Systems Development
P.O. Box 18812
Memphis, TN 38181-0812
Telephone 901 375-6833

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VIA: FedEx

To: Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Reference: Second Further Notice of Proposed Rule Making (FCC 95-501),

PR Docket No. 93-144, RM-8117, RM-8030, RM-8029,

GN Docket No. 93-252,

PP Docket No. 93-253

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REPLY COMMENTS OF FEDERAL EXPRESS CORPORATION, INC.

Submitted by:

Richard L. Dunn
Senior Manager
Wireless Systems Development
Federal Express Corporation

Introduction

Federal Express Corporation, Inc.¹ (Federal Express, D.B.A. FedEx) is greatly concerned by the actions of the Commission and comments filed by others in the current proceeding² and by the proposed actions of the Commission in the Second Notice³.

FedEx has been and continues to be an innovator in the use of data communications to promote highly efficient transfer of large amounts of information on 800 MHz radio channels. FedEx began using data communications on 800 MHz General Category channels in 1980 when it became obvious that there was not enough voice air time available to communicate the large amounts of information necessary to provide the services demanded by our customers. Currently FedEx handles over 3.3 million data transactions per day using more than 40,000 wireless devices and over 700 radio sites on 800 MHz channels. Over 25 percent of this equipment and data traffic are on General Category channels. The General Category channels used by FedEx comprise a significant portion of our totally integrated telecommunication network that allows FedEx customers to track their packages via the Internet.

¹ Federal Express is the world's largest express transportation company, providing fast and reliable services for more than 2.4 million items in 210 countries each working day. The company employs more than 119,000 people and operates more than 500 aircraft, 37,000 vehicles and nearly 180,000 Powership (R) and FedEx Ship (TM) automated systems in its integrated global network.

² First Report and Order (FCC 95-501), PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, adopted December 15, 1995: , paragraph 137.

³ Second Further Notice of Proposed Rule Making (FCC 95-501), PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, adopted December 15, 1995.

Background

The General Category Channels were the very first 800 MHz channels made available to non-SMRs. No other 800 MHz channels were available until September of 1982 when the Commission released the reserve 800 MHz spectrum and created the Industrial and Land Transportation, and lower 80 SMR pools. A large percentage of the usage of these General Category channels continue to be utilized by NON SMRs.

FedEx was granted its first 800 MHz license on March 21, 1977. FedEx began using data communications on 800 MHz General Category channels in 1980. FedEx had a growth rate in excess of 25% per year and was expanding its use of 800 MHz channels in the General Category. FedEx had constructed well over 50 licenses in the major metropolitan areas prior to the September, 1982, second release of 800 MHz spectrum.

FedEx uses voice and data radio communication to dispatch our couriers, provide information about the packages and documents it picks up and delivers, rapidly disseminate information about unusual occurrences in time compressed situations, communicate information to meet the special needs of our customers, handle exceptions, and handle emergency situations.

FedEx has been forced to be innovative in efficient use of radio spectrum due to our internal need for large amounts of information in order to satisfy the requirements of our customers and tremendous growth. Prior to the second release of 800 MHz spectrum, FedEx proposed a slow growth concept where by a specific channel could be requested thus allowing for a measure of standardization for a nation wide communications system. With the release of the reserve 800 MHz spectrum, the Commission adopted these measures.

Since then FedEx has re-tuned many of its previously granted General Category licenses to this "standard" frequency and constructed many others. Today FedEx has 165 systems on the same General Category channel in all major metropolitan areas, small cities, and rural areas. FedEx continues to operate 21 additional General Category channels in major metropolitan areas due to the capacity requirements of our business.

On October 16, 1992, FedEx sought a waiver seeking to have the same General Category channel designated as a "national frequency". In that waiver request FedEx demonstrated that it had acquired exclusive use of that General Category channel in all major metropolitan areas in non-border cities as well as in numerous small markets and rural areas. While the Commission did not grant the requested waiver, it did instruct all coordinators not to recommend that particular General Category channel in non-border areas to any applicant (other than FedEx) unless there are no alternative frequencies available.⁴

FedEx is now nearing the completion of an intensive and costly development effort to deploy its second generation high rate data communications network. The use of a single dedicated frequency as requested in our "national frequency" waiver request is an integral part of this development effort.

This multi-million dollar development effort was initiated only after exhaustive studies of alternative methods. Our unique business requirements have continuously required FedEx to create solutions. To satisfy our intensive communications needs, FedEx initiated a development effort to increase our data throughput on 800 MHz channels by a factor of four.

⁴ Letter from Ralph A. Haller, Chief, Private Radio Bureau, dated January 27, 1993. File 1700A1/7330-02

The Commission's Assumptions are Flawed

The Commission in the First Report and Order concluded, "A review of our licensing records indicates that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service."⁵ FedEx agrees with the joint comments of Industrial Telecommunications Association (ITA), and the Telephone Maintenance Frequency Advisory Committee (TELFAC) in that the available data does not support the Commission's conclusion.⁶

FedEx disagrees with the Commission's action in re-designating the General Category channels as SMR only. We agree with and support the comments of PCIA and ITA pertaining to the Commission's complete turn about from its previous opinions concerning the proper use of General Category channels.

FedEx also agrees with the joint comments of ITA and TELFAC⁷ in their "disapproval of the Commission's clear predisposition to auction the 150 General Category channels."

FedEx agreed with the Commission's belief that some restriction on future SMR applications on General Category channels and Pool channels may be appropriate, as expressed in the Further Notice of Proposed Rule Making released November 4, 1994.⁸ The Commission, in the current Orders and Notice, demonstrates a lack of consistency

⁵ First Report and Order (FCC 95-501), PR Docket No. 93-144, RM-8117, RM-8030, RM-8029 Adopted December 15, 1995, paragraph 137.

⁶ Joint Comments of the Industrial Telecommunications Association, Inc. and the Telephone Maintenance Frequency Advisory Committee, February 15, 1996, page 5.

⁷ Joint Comments of the Industrial Telecommunications Association, Inc. and the Telephone Maintenance Frequency Advisory Committee, February 15, 1996, page 3.

⁸ Further Notice of Proposed Rule Making (FCC 94-271), PR Docket No. 93-144 and PR Docket No. 93-253, adopted October 20, 1994, released November 4, 1994, paragraph 52.

and disregard for the original intended use of General Category channels established by previous Commission decisions.

The General Category Channels were the very first 800 MHz channels made available to conventional users. No other 800 MHz channels were available to conventional users until September of 1982, when the Commission released the reserve 800 MHz spectrum and created the Industrial and Land Transportation, and lower 80 SMR pools. A large percentage of the usage of these channels continue to be utilized by non SMRs. FedEx was granted its first 800 MHz license on March 21, 1977. This system is still in service today as are numerous other conventional systems constructed by the first 800 MHz licensees.

As the Commission is well aware, over 4,000 American citizens applied for 800 MHz licenses through license mills with the promise of quick profits. This prompted action by the Federal Trade Commission (FTC) as well as requests to the Commission for extensions of time to meet construction requirements. This is but one indication of the speculation that has occurred in the 800 MHz band.

Between November 8, 1993, and August 10, 1994, the License Bureau was swamped by a flood of over 40,000 applications. The Bureau was finally able to dispose of the license back log with help from the industry. On November 1, 1995, the Wireless Telecommunications Bureau by Public Notice, announced the grant of over 6,300 of the more than 40,000 applications for channels in the SMR, Business, Industrial/Land Transportation, and General Categories. Another indication of the speculative nature that still plagues the wireless industry.

Approximately 10% of the grants announced in the November 1, 1995, Public Notice were for General Category Channels⁹.

The greater than 6,300 licenses have a grant date of October 31, 1995, thus the construction due dates will not occur until later this year. This leaves in question how many of these grants will actually be constructed and what is the actual relationship between **constructed** non-SMR systems and speculative SMR licenses.

As FedEx has continued to expand into more rural areas, we have found fewer channels to be available. Coordinators have found it increasingly difficult to locate channels in any eligible services which could be coordinated without short spacing in some of the most rural areas of the United States.

In many rural areas ALL 800 MHz channels have been either applied for or granted. It is difficult to comprehend how all of the available 800 MHz spectrum licensed to SMRs and CSMRs in low population rural areas could acquire enough subscribers to make these multiple systems profitable.

FedEx maintains that much of the "overwhelming majority" of SMR licenses in the General Category, as stated by the Commission, is due to speculative licensing and entrepreneurial enterprises seeking to increase their financial backing by equating a licensed frequency to a financial asset.

Finally, FedEx wishes to call into question the actual portion of **constructed** General Category channels licensed to CSMRs and SMRs whereas this is the criteria the Commission is using to determine the spectrum should be SMR only, and is auctionable.

⁹ It is also interesting to note that out of the over 40,000 applications, there were only 842 unique company names.

Reply Comments of Federal Express Corporation, Inc.

Federal Express Corporation, Inc.¹⁰ (Federal Express, D.B.A. FedEx) respectfully submits these reply comments in response to the Commission's Second Notice of Further Proposed Rule Making and comments filed by others.

Licensing of Lower 80 and General Category Channels

Geographic Area Licensing

It is the opinion of FedEx that the **General Category Channels** should NOT be converted to geographic area licensing but remain site-specific. The General Category is a very mature band. It is very doubtful that sufficient suitable spectrum exists to relocate any General Category incumbents in the top 100 EAs.

In the Commission's 1994 Further Notice of Proposed Rule Making you correctly concluded you should revise your rules to restrict future SMR use of Pool Channels and possibly General Category channels¹¹.

Prior to the current action, many major metropolitan cities had waiting lists for 800 MHz channels. An examination of the top 10 EAs will show that there are no 800 MHz frequencies available, and relatively few 800 MHz channels to be available in the top 100 EAs.

¹⁰ Federal Express is the world's largest express transportation company, providing fast and reliable services for more than 2.4 million items in 210 countries each working day. The company employs more than 119,000 people and operates more than 500 aircraft, 37,000 vehicles and nearly 180,000 Powership (R) and FedEx Ship (TM) automated systems in its integrated global network.

¹¹ Further Notice of Proposed Rule Making (FCC 94-271), PR Docket No. 93-144 and PR Docket No. 93-253, adopted October 20, 1994, released November 4, 1994, paragraphs 52 & 53.

FedEx supports the comments of the Personal Communications Industry Association (PCIA) in its assertion that auctioning the General Category Pool would be extremely counter productive.¹²

It is doubtful that existing licensees who are able to obtain market-area licenses in the area they are currently licensed would be able to expand upon their current service areas and continue to make a profit given the extreme competitiveness of the mature General Category channels. At best, area licensing of the General Category Channels would create what is described in other industries as "churn"¹³

The geographic area licensing of the General Category Channels will affect thousands of businesses providing products and/or services to millions of Americans. The ripple effect of this action will increase the wireless communication costs of American businesses, and ultimately cost American citizens many millions of dollars.

FedEx was granted its first 800 MHz license on March 21, 1977. Since that time we have changed transmitter sites many times and added additional transmitter sites to accommodate changes in the business needs of FedEx within the geographic area. If you allow EA licensing, all existing site specific licensees, who cannot be relocated, will be locked within their existing 22 dBu contour. If an increase in the business needs of a site licensee area outside the 22 dBu contour occurs, that licensee will not be allowed to expand or relocate his 22 dBu contour to accommodate the new business opportunity. Thus denying that business entity the opportunity to compete in a dynamically changing business market.

¹² Comments of the Personal Communications Industry Association , February 15, 1996, General SMR Rules and Policies

¹³ This is considered illegal in the insurance industry.

This will ultimately affect 187 FedEx systems providing necessary services to Wall Street customers in Manhattan, electronics manufactures in Los Angeles and San Jose, distributors in Chicago, vacationers in Miami, as well as hundreds of thousands of other businesses and individuals who depend upon the reliability of FedEx.

The Commission's actions will remove all possibility of FedEx adapting their own radio systems to our changing business markets. Additionally, the Commission will place a great restriction upon the innovative efforts of FedEx.

Treatment of non-SMR incumbents in the General category.

In the Second Further Notice of Proposed Rule Making, you state "With respect to the lower 80 and General Category channels, however, we believe that there are no equitable means of relocating incumbents to alternative channels, and that there are no identifiable alternative channels to accommodate all such incumbents. . . . We therefore tentatively conclude that there should be no mandatory relocation mechanism for SMR operators operating on the lower 80 and General Category channels." ¹⁴

The General Category channels were the only 800 MHz channels available to non-SMR users until September of 1982. No other 800 MHz channels were available until September of 1982 when the Commission released the reserve 800 MHz spectrum and the created the Industrial and Land Transportation, and lower 80 SMR pools. A large number of non-SMRs continue to use the General Category channels granted to them prior to September of 1982.

¹⁴ Second Further Notice of Proposed Rule Making (FCC 95-501), PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, adopted December 15, 1995, paragraph 315

We wish to bring to your attention that all 800 MHz channels have been subject to inter-category sharing since 1986. As such SMRs have acquired large portions of the Industrial and Land Transportation channel pools. A lesser portion of Industrial and Land Transportation licensees have been able to utilize SMR channels. It would therefore be a false assumption that any more suitable channels exist outside the General Category for non-SMR incumbents than does for SMRs.

FedEx agrees with and supports the joint comments of Industrial Telecommunications Association (ITA), and the Telephone Maintenance Frequency Advisory Committee (TELFAC)." in their expression of concern with the fate of non-SMR systems licensed on the General Category Channels.¹⁵

By the Commission's omission of non-SMR incumbents, it has left open the question of mandatory relocation for non-SMRs operating on the lower 80 and General Category channels. FedEx has demonstrated that it has acquired exclusive use of the same General Category channel in all major metropolitan areas in non-border cities as well as in numerous small markets and rural areas.

FedEx uses its data and shared voice radio network to dispatch our couriers, provide information about the packages and documents it picks up and delivers, rapidly disseminate information about unusual occurrences in time compressed situations, communicate information to meet the special needs of our customers, handle exceptions, and report emergency situations. The General Category channels used by FedEx comprise a significant portion of our totally integrated telecommunication network which allows FedEx to satisfy the needs of our customers.

¹⁵ Joint Comments of the Industrial Telecommunications Association, Inc. and the Telephone Maintenance Frequency Advisory Committee, February 15, 1996, page 8.

This totally integrated network allows FedEx to communicate information to and from a FedEx vehicle using a General Category channel to a customer to connect to the FedEx telecommunications network via the Internet. It is very unlikely that suitable alternative 800 Mhz channels are available to re-locate the FedEx General Category channels in the majority of the locations at which they are currently in operation.

By allowing SMRs and CSMRs into the Industrial and Land Transportation pools via inter category sharing, the Commission has severely diminished the available channels for non SMRs. If the commission deems it necessary to require mandatory relocation of non SMRs from the General Category, the Commission **must** also require SMRs to be relocated out of the Industrial and Land Transportation pools.

Competitive Bidding Issues for Lower 80 and General Category Channels

Auctionability of Lower 80 and General Category Channels

It is the premise of FedEx that the General Category channels are not auctionable. By declaring the General Category channels SMR only and ignoring the thousands of non-SMRs, the Commission, by its own actions, is attempting to manufacture auctionable spectrum.

FedEx could not participate in auctions. FedEx would not be eligible for the economic incentives as proposed by the Commission. FedEx uses General Category channels as part of a totally integrated private network. We do not provide communications services to the general public. By the Commission's current action, we are not be allowed to convert our existing General Category channels to geographic area licenses.

Providing communications services to the general public is not one of the business endeavors of FedEx. Handling the shipping needs of our customers in a time definite, efficient, and cost effective manner, is the primary endeavor of FedEx. The cost of radio equipment and the associated infrastructure is a portion of the shipping charges paid to us by our customers. The customized radio communications network is one of the tools used to provide the reliability and quality of service our customers have come to expect from FedEx.

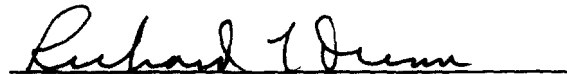
Summary

It is the opinion of FedEx that the **General Category Channels are not auctionable** and should **NOT be converted to geographic area licensing** but remain site-specific.

If the commission deems it necessary to require **mandatory relocation of non SMRs** from the General Category, the Commission **must also require SMRs to be relocated out of the Industrial and Land Transportation pools**.

FedEx respectfully submits these reply comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

Federal Express Corporation



Richard L. Dunn
Senior Manager
Wireless Systems Development

Dated: February 28, 1996